COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	**D.T.E. 04-33**

VERIZON MASSACHUSETTS' REPLY TO BRIEFING QUESTIONS

INTRODUCTION

On March 1, 2005, the Hearing Officers issued a Notice that included two briefing questions relating to the change of law and dispute resolution provisions contained in interconnection agreements between Verizon Massachusetts ("Verizon MA") and competitive local exchange carriers ("CLECs") listed in Attachment A of the Notice. As the Notice states, Verizon MA has explained that most of its interconnection agreements permit Verizon MA to discontinue, without an amendment, elements that are no longer subject to unbundling under section 251(c)(3) of the Act. The Hearing Officers have asked for further information concerning the provisions that give Verizon MA this right.

In its August 20, 2004, petition to dismiss particular CLECs (including those listed in the Notice's Attachment A) from the arbitration, Verizon MA pointed out that its interconnection agreements with those CLECs contain specific terms that clearly and unambiguously permit Verizon MA to cease providing unbundled network elements ("UNEs") that are not subject to an unbundling obligation under 47 U.S.C. § 251(c)(3), either immediately or after a specified notice

period. It is also clear that those agreements need not be amended before Verizon MA may discontinue UNEs that are no longer required as a result of the Federal Communications Commission's ("FCC") *Triennial Review Order*[1] or its *Triennial Review Remand Order*.[2] Therefore, although the Department allowed these CLECs to remain in this proceeding, there is no need to arbitrate changes to their interconnection agreements to implement the FCC's "delisting" of particular UNEs. Indeed, to arbitrate contract revisions for these CLECs would improperly alter the existing terms of the parties' agreements and deny Verizon MA specific contractual rights under its interconnection agreements.

In addition to requesting identification of the contract terms that permit automatic implementation of FCC rulings delisting UNEs, the Hearing Officers asked the parties to indicate whether contractual change of law or dispute resolution proceedings have been triggered by the *Triennial Review Order, USTA II*, the *Interim Rules Order*,[3] and/or the *Triennial Review Remand Order*. (Notice at 2.) Verizon MA answers that question below, but emphasizes at the outset that *all* carriers must comply with the FCC's mandatory transition plans regarding specific elements established in the *TRO* and *TRRO*, regardless of the terms of their interconnection agreements. No amendments are necessary to implement the FCC's immediately effective directives that prohibit CLECs from obtaining certain new unbundled elements and that impose a

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1 Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004) ("*USTA II*"), *cert. denied, NARUC v. United States Telecom Ass'n*, Nos. 04-12, 04-15 & 04-18 (U.S. Oct. 12, 2004).

2 Order on Remand, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC No. 04-313, Cc Docket No. 01-338 (released Feb. 4, 2005) ("*TRRO*").

3 Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 16783, ¶ 22 (Aug. 20, 2004) ("*Interim Rules Order*").

transition plan for the embedded base of those elements. The elements subject to such express mandates are: line sharing arrangements; new mass market switching, including new orders for UNE-P; and for high-capacity loops and transport facilities in the absence of impairment under the *TRRO* criteria. Verizon MA implemented the FCC's *TRO* rules concerning line sharing following the effective date of those rules in October 2003. The FCC's recently adopted *TRRO* regulations are immediately effective and binding on the parties irrespective of the terms of their interconnection agreements. As the Supreme Court has stated, "[c]ontractual arrangements remain subject to subsequent legislation by the presiding sovereign."[4] The existence of an interconnection agreement cannot deprive the FCC of jurisdiction to issue orders binding on carriers, especially where, as here, the orders are part of mandatory transition regulations required to conform the FCC's rules to binding federal court decisions.[5] Even if the interconnection agreements required some period of negotiation to effectuate an immediate change of law – which they clearly do not – such a term could not trump effective FCC orders and rules.

BACKGROUND

As the Department has recognized, Verizon MA has *no* legal obligation to unbundle any UNE in the absence of a valid finding of impairment by the FCC under Section 251(d)(2) of the Telecommunications Act of 1996 (the "Act"). In its *Consolidated Order* in D.T.E. 03-60 and D.T.E. 04-73, issued December 15, 2004, the Department held that "[w]here the FCC has found affirmatively that CLECs are 'not impaired' and that ILECs are therefore not obligated to

4 *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 147-148 (1982) (citing *Veix* v. *Sixth Ward Building & Loan Assn. of Newark*, 310 U.S. 32 (1940); *Home Building & Loan Assn*. v. *Blaisdell*, 290 U.S. 398 (1934))

5 *See Louisville & Nashville R.R. v. Mottley*, 219 U.S. 467, 482, 55 L.Ed. 297, 303, 31 S.Ct. 265, 270 (1911) (finding it "inconceivable" that the exercise of the commerce power by federal authorities could be hampered or restricted to any extent by contracts previously made between individuals or corporations).

provide the network elements as UNEs under Section 251, a contrary finding of impairment would conflict with federal regulation."[6] *Consolidated Order*, at 23 n.17.

In the *Triennial Review Order*, the FCC removed the incumbent local exchange carriers' ("ILECs") obligations to provide, among other UNEs, line sharing, enterprise switching (and associated shared transport), OCn transport, OCn loops, switching facilities subject to the Four-Line Carve-Out Rule, and call-related data bases. With respect to line sharing, the FCC did more than make a non-impairment finding; it adopted a detailed transition plan, including a prohibition on the addition of new arrangements and prescribed rates during a phase out CLECs' access to line-sharing arrangements. *TRO* at ¶ 267; 47 CFR 51.319.[7] The FCC's determinations as to all of these delisted elements were either upheld by the D.C. Circuit in *USTA II* or not appealed.

In *USTA II*, the D.C. Circuit ruled that the FCC's regulations requiring ILECs to provide unbundled mass market switching (and associated shared transport) and unbundled high capacity

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6 Other state commissions have, likewise, recognized that there must be a lawful, "affirmative finding of impairment *before* an incumbent telecommunications carrier can be *required* to provide a UNE." *See, e.g.*, Order, *Verizon Northwest Inc. Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Oregon Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, ARB 531, at 8 (Ore. PUC June 30, 2004) (emphases added); see also, Order Dismissing Petitions, *Petition of the Competitive Carrier Coalition for an Expedited Order that Verizon Virginia Inc. and Verizon South Inc. Remain Required to Provision Unbundled Network Elements on Existing Rates and Terms Pending the Effective Date of Amendments to the Parties' Interconnection Agreements; Petition of AT&T Communications of Virginia, LLC, and TCG Virginia, Inc. for an Order Preserving Local Exchange Market Stability*, Case Nos. PUC-2004-00073 & PUC 2004-00074, at 6 (Va. SCC July 19, 2004).

7 The FCC adopted a three-year transition plan for line sharing pursuant to Section 201(b) of the Act. *TRO* at ¶ 267. During the first year of the transition period, which ended on October 2, 2004, CLECs were permitted to obtain new line sharing customers through use of the HFPL at 25 percent of the stand-alone loop rate. After that, CLECs could not obtain new line sharing customers, and the rate for arrangements obtained during the first year of the transition increased incrementally, *i.e.*, to 50 percent of the stand-alone loop in year two of the transition and 75 percent of the standalone rate in year three. *Id*. at ¶ 265. This "incremental approach" was intended to "encourage requesting carriers either to migrate their customers to the whole loop in an orderly manner or to reach agreement, if it is desired, with the incumbent LEC to continue access to the HFPL on different terms and conditions." *Id.* at ¶ 267. In this regard, the FCC "strongly encourage[d] the parties to commence negotiations as soon as possible so that a long-term arrangement is reached." *Id.* ¶ 265. The FCC's plan has, in fact, prompted carriers to undertake such negotiations, and Verizon has reached long-term agreements with carriers in Massachusetts and other states.

facilities (loops, dedicated transport, and dark fiber) were unlawful. In response to the remand ordered by the court, the FCC's *TRRO* found that competitors are ***not*** impaired and unbundling is ***not*** required for any local circuit switching or dark fiber loops, or for certain high-capacity loops or dedicated transport.[8] In deciding to eliminate these UNEs, the FCC balanced the costs and benefits of unbundling, to "provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition." *TRRO* at ¶ 2. The resulting, affirmative prohibition on new UNE arrangements for these services is unambiguous and unconditional:

- "Incumbent LECs have ***no obligation*** to provide competitive LECs with unbundled access to mass market local circuit switching." *TRRO ¶ 5.*

- The FCC's transition plan "***does not permit*** competitive LECs to add new switching UNEs." *Id.*

- "[T]he disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, justify ***a nationwide bar*** on such unbundling." *Id.* at ¶ 204.

- "[W]e find that the continued availability of unbundled mass market switching would impose significant costs in the form of decreased investment incentives, and we therefore determine ***not to unbundle*** that network element…" *Id*. at ¶ 210.

- "We conclude that requesting carriers are not impaired without access to unbundled DS3 transport on routes connecting wire centers where both if the wire centers are either Tier 1 or Tier 2 wire centers." *Id*. at ¶129

- "These transition plans … ***do not permit*** competitive LECs to add new dedicated transport UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *Id*. at ¶ 142.

- "These transition plans … ***do not permit*** competitive LECs to add new high-capacity loop UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists." *Id*. at ¶195.

[8] *TRRO* ¶¶ 5, 126, 129, 133, 174, 179, 182, 199, 204.

- "Competitive LECs are not impaired without access to dark fiber loops in any instance." *Id.* at ¶ 5 and 146.

- "With respect to dark fiber loops, we eliminate unbundling on a nationwide basis." *Id.* at ¶ 166.

And, as noted above, the rules themselves explicitly state that where an ILEC is not required to provide unbundled access to a given network element under the new rules, "requesting carriers ***may not obtain***" that element as a UNE.[9]

The *TRRO* also imposes specific transition periods for moving the embedded base of delisted elements to alternative arrangements. Specifically, the FCC granted CLECs twelve months to "submit orders to convert their UNE-P customers to alternative arrangements." *TRRO* ¶ 199. The FCC reasoned that "the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut overs or other conversion." *Id.* ¶ 227. The FCC likewise imposed a 12-month period to transition discontinued UNE loops and transport.[10] For purpose of negotiating those follow-on arrangements, the FCC gave the parties up to twelve months "to modify their interconnection agreements, including completing any change of law processes." [11]

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[9] The FCC's prohibition on new orders for discontinued facilities makes sense in light of the FCC's remedial obligation and purpose in amending its rules. CLECs have obtained, for example, a substantial base of existing UNE-P customers notwithstanding that all of those customers were added pursuant to *unlawful* unbundling rules. The *TRRO* addresses that injustice by requiring CLECs to make alternative arrangements to serve those existing embedded customers within twelve months of the effective date of the order; it likewise requires CLECs to make alternative arrangements for high capacity facilities that are not subject to unbundling. It would unlawfully extend thrice-vacated unbundling rules, complicate that transitional effort, and undermine attempts by carriers to reach commercial agreements if CLECs were permitted to add new delisted UNEs after the *TRRO*'s effective date.

[10] *See e.g.* 47 C.F.R. §§ 51.319(a)(4)(iii), 51.319(d)(2)(iii) and 51.319(e)(2)(ii)(c). The rules also provide for an 18-month transition period for dark fiber. Id. ¶¶ 144, 197.

[11] *TRRO* ¶¶ 143, 196, 227. The FCC also ruled that facilities no longer subject to unbundling would be subject to a true-up to the FCC's prescribed transitional rates, back to March 11, 2005, upon the amendment of the relevant interconnection agreements. *Id.* ¶¶ 145, 198 and 228.

The FCC made clear, however, that the transition periods apply *only* to the "embedded customer base," but as of March 11, 2005, **"do not permit** competitive LECs to add new … UNEs pursuant to section 251(c)(3) where the Commission determines that no section 251(c) unbundling requirement exists."[12]

The FCC's transition plan imposed in the *TRRO* applies without regard to existing contract language, and does not depend on an amendment for its implementation.[13] Therefore, the FCC's no-new-adds prohibition for the elements delisted in the *TRRO* took effect on March 11, 2005, for *all* carriers. Although the FCC contemplated that carriers would negotiate arrangements to implement the FCC's *permanent* unbundling rules (*e.g.*, to change the list of UNEs available under interconnection agreements, to work out operational details of the transition), it repeatedly and explicitly stated that the transition period does not apply to the "no-new-adds" prohibition. It would make no sense for the FCC to have ruled that the transition plan "does not permit competitive LECs to add new switching UNEs" as of March 11, 2005 (*TRRO*, ¶ 5), but then to have given carriers 12 months to complete an amendment before they could implement this prohibition. Obviously, the FCC's bar on new orders as of March 11, 2005, would be meaningless if Verizon MA had to wait until March 11, 2006, to implement it.

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12 TRRO ¶142, 195; *see also, id.* ¶227.

13 The same is true for the FCC's decision in the *TRO* regarding line sharing, which prescribed a transition plan for existing arrangements.

RESPONSES TO BRIEFING QUESTIONS

Briefing Question 1:

Notwithstanding the carrier's substantive arguments in this proceeding regarding proposed rates, terms, or conditions for any specific service, for each carrier's individual interconnection agreement, please identify each and every term that is relevant to whether or not the interconnection agreement's change of law or dispute resolution provisions permit the parties to implement changes of "applicable law" without first executing an amendment to the interconnection agreement. In providing your response, please quote the relevant interconnection agreement provisions, citing them by section, and provide highlighted copies of the relevant language.

Response to Briefing Question 1:

A. Change of Law Provisions

Each of the interconnection agreements with CLECs listed in Attachment A of the Hearing Officers' Notice contain terms that permit Verizon MA to cease providing UNEs that are not subject to an unbundling obligation under 47 U.S.C. § 251(c)(3), either immediately or after a specified notice period. Verizon MA provided the required notices to these CLECs in a timely manner for all of the UNEs delisted in the *TRO*. No contract amendments were required for Verizon MA to cease providing the delisted elements and no amendments are now required – the very terms of the agreements specify that when Verizon MA's legal obligation to provide UNEs ceases, the contractual right also ends.

With respect to the UNEs addressed in the *TRRO*, contractual change-of-law provisions are not relevant to implementation of the FCC's mandatory transition regulations, which do not depend on any contract amendments. The FCC has the authority to issue immediately effective directives that supersede any "change-of-law" process under interconnection agreements, and it clearly did not intend that the start of the no-new-adds period and its transition should be subject change-of-law process. Instead, the FCC directed that new orders for the discontinued UNEs

must cease as of a date certain – March 11, 2005 – with no exceptions. The interconnection agreements cannot exempt carriers from complying with an explicit directive of federal law.

For purposes of this analysis, Verizon MA's interconnection agreements with the CLECs listed on Attachment A fall into the following six groups:[14]

> Group 1: Acceris Communications Corp. f/k/a Worldxchange Corp.; ACN Communications Services, Inc.; BCN Telecom f/k/a NUI Telecom, Inc.; Budget Phone, Inc.; BullsEye Telecom, Inc.; Covista, Inc.; DSCI Corp.; DSLnet Communications LLC; ICG Telecom Group, Inc.; LightWave Communications, Inc.; MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.); New Horizons Communications Corp.; PaeTec Communications, Inc.; Talk America, Inc.;
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> Group 2: Broadview Networks, Inc; Broadview NP Acquisition Corp.; Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp.; Equal Access Networks LLC; KMC Telecom V, Inc.; Level 3 Communications LLC; Lightship Telecom LLC; McGraw Communications, Inc.;
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> Group 3: BrahmaCom, Inc.; CTC Communications Corp.;
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> Group 4: Focal Communications Corp. of MA; Sprint Communications Company;
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> Group 5: DIECA d/b/a/ Covad Communications Corp.; and
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> Group 6: ACC National Telecom Corp.

The CLECs within each group have interconnection agreements with Verizon MA that contain the same or materially identical "change of law" language. The relevant provisions of these agreements are set forth in Exhibit I attached hereto. (*See also* Exhibit IV, Table 1(a) for a summary of these provisions by CLEC.)

Upon review of those provisions, there can be no dispute that they permit Verizon MA to cease providing UNEs that are not subject to an unbundling obligation under Section 251(c)(3)

[14] Adelphia Business Solutions Operations d/b/a Telcove should be removed from the list because it is no longer in business.

of the Act and the FCC's implementing regulations. The following discussion explains why the agreements in each group permit Verizon MA to discontinue providing UNEs once Verizon MA's obligation to do so ends.

Group 1 CLECs' Interconnection Agreements

Verizon MA's interconnection agreements with the 14 CLECs in Group 1 contain two separate provisions that make clear that the parties agreed at the time of contracting that Verizon MA may cease providing UNEs when no longer required to do so by federal law. Section 4.7 provides:

> **Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service,** payment or benefit, otherwise required to be provided to [CLEC] hereunder, then **Verizon may discontinue the provision of any such Service**, payment or benefit . . . . Verizon will provide thirty (30) days prior written notice to [CLEC] of any such discontinuance of a Service, unless a different notice period or different conditions are specified . . . .

Verizon-Group 1 CLECs' Interconnection Agreements,[15] General Terms & Conditions § 4.7 (emphases added); *see also* General Terms & Conditions § 50.1.

As this provision makes clear, Section 4.7 applies "[n]otwithstanding *anything* in th[e] Agreement" that might be "to the contrary" and that could be construed to require Verizon to continue providing access to a UNE. Thus, if Section 4.7 applies — and it does, as explained below — by its terms it overrides any other term in the Agreement that might arguably obligate Verizon MA to provide UNEs. The language in Section 4.7 states further that if the "result of

[15] While the majority of Verizon's interconnection agreements with Group 1 CLECs have a 30-day notice requirement, under some circumstances a 60-day or 90 day notice requirement applies. *See e.g.*, Verizon-ICG Telecom Group, Inc., General Terms & Conditions §§ 4.7; 50.1.

any . . . judicial" or "regulatory . . . decision" is that Verizon "is not required by Applicable Law" to provide "any Service," Verizon MA "may discontinue the provision" of that Service. The Agreement defines "Service" to include, among other things, "[a]ny . . . Network Element" - so the term "Service" as used in section 4.7 clearly encompasses UNEs. *See id*. at Glossary § 2.86. It further defines "Applicable Law" as "[a]ll effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this agreement." *Id*. at Glossary § 2.10. The FCC's decisions in the *Triennial Review Order* and the *TRRO* and the D.C. Circuit's mandate in *USTA II* are "effective law, government regulations, and orders," applicable to the parties' contractual obligations to provide UNEs.

With respect to UNEs in particular, Verizon MA's interconnection agreements with Group 1 CLECs contain an even more specific provision:

> Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, **if Verizon provides a UNE or Combination to** [CLEC]**, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNEs or Combination, Verizon may terminate its provision of such UNE or Combination to** [CLEC] . . . .

Id. at UNE Attachment § 1.5 (emphasis added). Like Section 4.7, this Section provides that if "the FCC" or "a court" determines that "Verizon is not required" to "provide [a] UNE[] or Combination," Verizon "may terminate its provision" of that UNE. As explained above, the *Triennial Review Order* and *TRRO* are such decisions of the FCC that determined that Verizon is "not required" to provide certain UNEs. (although, again, Verizon MA must comply with the *TRRO*'s transition plan in all cases, even if particular contracts would permit Verizon to discontinue service to the embedded base before the transition plan will). Therefore, Verizon MA "may terminate" its provision of those UNEs — although, with respect to the elements

delisted in the *TRRO*, Verizon MA must comply with the FCC's plan for the embedded base, rather than any contract provisions that would permit Verizon to discontinue delisted items at an earlier date. Moreover, like Section 4.7, nothing in Section 1.5 states — or even suggests — that Verizon MA must amend its agreement before it terminates its provision of UNEs. In fact, Sections 4.7 and 1.5 must be read as excluding this requirement because it is not included in those sections as a prerequisite.

Accordingly, for the reasons set forth above, the terms of these agreements relieve Verizon MA, in the clearest possible language, of any contractual obligation to provide access to any UNE that it is not required to provide under federal law and specifically authorize Verizon to "discontinue the provision of any" such UNE.

Group 2 CLECs' Interconnection Agreements

Verizon MA's interconnection agreements with the eight CLECs in Group 2 contain two separate provisions that expressly permit Verizon MA to cease providing UNEs that are no longer required by federal law. Section 11.0 states the parties' agreement with respect to discontinuing UNEs no longer required by federal law in general terms:

> **To the extent required by Applicable Law**, and subject to the provisions of this Section 11.0 (including, without limitation, Section 11.7 hereof), BA shall offer to [CLEC] nondiscriminatory access to Network Elements on an unbundled basis at any technically feasible point pursuant to, and in accordance with the terms and provisions of, this Agreement; provided, however, that **BA shall not have any obligation to continue to provide such access with respect to any Network Element listed in Section 11.1 (or otherwise) that ceases to be subject to an unbundling obligation under Applicable Law** . . . . Unless otherwise agreed to by the Parties (or required by Applicable Law), **the transition period shall be at most three (3) months from the date that the FCC (or other applicable governmental entity of competent jurisdiction) issues (or issued) public notice that BA is not required to provision a particular Network Element.** . . .

Verizon-Group 2 CLECs' Interconnection Agreements,[16] General Terms & Conditions § 11.0 (emphases added). The above language stating that Verizon MA "shall not have *any* obligation" to "continue" to provide access to those UNEs "that cease[] to be subject to an unbundling obligation under Applicable Law" *directly* ties Verizon MA's obligations to the requirements of Applicable Law, which, in turn, is defined to mean "all laws, regulations and orders applicable to each Party's performance of its obligations hereunder." *Id*. at General Terms & Conditions § 27.0. As the D.C. Circuit plainly held in *USTA II*, in the context of Verizon MA's obligation to provide UNEs, the only law that is applicable is the requirements imposed by the FCC's regulations implementing Section 251(c)(3) of the Act. Accordingly, because federal law no longer requires Verizon MA to provide these UNEs, Verizon MA is not obligated to continue to do so under Section 11.0.[17]

In addition, Section 27.4 confirms Verizon MA's right to discontinue certain UNEs once federal law no longer requires Verizon to provide them. It provides that:

> Except as explicitly provided in Sections 4.2.4, 5.7 and 22 of this Agreement, **notwithstanding anything else herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that BA is not required to furnish any service, facility or arrangement**, or to provide any benefit required to be furnished or provided to [] hereunder, **then BA may discontinue the provision of any such service, facility, arrangement** or benefit to the extent permitted by any such decision, order or determination **by providing ninety (90) days prior written notice to** [CLEC], unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff or Applicable Law) for termination of such service, in which event such specified period and/or conditions shall apply.

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[16] Verizon MA is referred to in these interconnection agreements by its former name, "BA" or Bell Atlantic.

[17] Likewise, Section 11.8 and 11.8.1 provide that Verizon MA is obligated to provide network elements or a combination of network elements "only to the extent provision … is required by Applicable Law."

Id. at General Terms & Conditions § 27.4 (emphases added). This section applies, with a few limited exceptions (none of which is relevant here), "notwithstanding *anything else*" in the agreement that is "to the contrary" and that could be construed to require Verizon to continue providing access to a UNE even though Verizon MA is not legally required to do so. Section 27.4 provides that Verizon MA "may discontinue the provision of any service, facility, [or] arrangement" — a phrase that obviously includes UNEs — if "any judicial or regulatory" decision "determine[s] that [Verizon MA] is not required to furnish any service, facility or arrangement." As explained above, the *Triennial Review Order* and the *TRRO* are just such decisions. Thus, Section 27.4, like Section 11.0, permits Verizon MA to discontinue providing access to a UNE, on notice and without amending the agreement, whenever federal law no longer requires Verizon MA to provide access to that UNE.

Group 3 CLECs' Interconnection Agreements

Verizon MA's interconnection agreements with the two CLECs in Group 3 contain a provision that states in the broadest possible terms that Verizon MA may cease providing a UNE that is no longer required by federal law. Section 2.2 provides:

> **The Parties agree** that **if any judicial or regulatory authority** of competent jurisdiction **determines (or has determined) that BA is not required to furnish any service or item** or provide any benefit to Telecommunications Carriers otherwise required to be furnished or provided to [CLEC] … hereunder, **then BA may, at its sole option, avail itself of any such determination by providing written notice** thereof to [CLEC].

Verizon-Group 3 CLECs' Interconnection Agreements,[18] § 2.2 (emphases added). The parties, therefore, expressly "agree[d]" that Verizon MA has the "sole option" to "avail itself" of "any judicial or regulatory" decision holding that Verizon MA "is not required to furnish any service

[18] Verizon MA is referred to in these interconnection agreements by its former name, "BA" or Bell Atlantic.

or item," which includes UNEs. Moreover, the parties "agree[d]" that Verizon MA may do so simply "by providing written notice," with no need to amend the agreement. Thus, if Section 2.2 applies — and it does — by its terms, it entitles Verizon MA to stop providing UNEs based upon a decision by the FCC or a court by providing written notice to these CLECs. It is not contingent on the parties first amending their agreement to reflect that FCC or judicial decision.

Finally, nothing in Sections 8.2 and 8.3 of these interconnection agreements trumps the plain language of Section 2.2, which makes no reference to requiring an amendment before a service is terminated.[19] Indeed, it would make no sense to construe Sections 8.2 and 8.3 as requiring Verizon MA to continue providing a service until the agreement is amended. Therefore, Section 2.2 must be interpreted to permit Verizon MA to terminate its provision of UNE eliminated by the FCC - even while the parties are negotiating an amendment to conform the agreement to the current requirements of federal law.

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[19] Section 8.2 provides that:

> In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 24 (Dispute Resolution Procedures) hereof.

Section 8.3. provides that :

> In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCIm or Bell Atlantic to perform any material terms of this Agreement, MCIm or Bell Atlantic may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

Group 4 CLECs' Interconnection Agreements

Verizon MA's interconnection agreements with the two CLECs in Group 4 contain two separate provisions that allow Verizon MA to discontinue providing UNEs that it is not obligated to offer under federal law. Section 8.4 provides:

> **Notwithstanding anything herein to the contrary, in the event that as a result of any unstayed decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that a Party ("Providing Party") shall not be required to furnish any service, facility, arrangement** or benefit required to be furnished or provided to the other Party ("Recipient Party") hereunder, then **the Providing Party may discontinue the provision of any service, facility, arrangement** or benefit ("Discontinued Arrangement") **to the extent permitted by any such decision, order or determination by providing sixty (60) days prior written notice to the Recipient Party**, unless a different notice period or different conditions are specified . . . . **Immediately upon provision of such written notice to the Recipient Party, the Recipient Party shall be prohibited from ordering and the Providing Party shall have no obligation to provide new Discontinued Arrangements.**

Verizon-Group 4 CLECs' Interconnection Agreements, Government Compliance § 8.4 (emphases added). Like other provisions discussed above, this section also applies "notwithstanding *anything*" in the agreement that is "to the contrary" and could be construed to require Verizon MA to continue providing access to a UNE. And, like those other provisions, it permits Verizon MA to "discontinue the provision of any service, facility, [or] arrangement" — which includes UNEs — following "any judicial or regulatory" determination that Verizon MA "shall not be required to furnish [that] service, facility, [or] arrangement." As explained above, the *Triennial Review Order* and the *TRRO* are such decisions (although Verizon MA cannot override the *TRO* and *TRRO*'s mandatory transition periods). Moreover, the provision expressly states that the right to "discontinue the provision" of any UNE is made effective by "providing sixty (60) days prior written notice," not by amending the agreement.

In addition, the agreement contains an even more specific provision with respect to UNEs in particular:

> **1.7 Limitations on Unbundled Access**
>
> **Notwithstanding anything else set forth in the Interconnection Agreement**:
>
> 1.7.2 Without limiting VERIZON's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a Network Element or a Combination, **if VERIZON provides a Network Element or combination of Network Elements ("Combination") to SPRINT, and** the Department, **the FCC, a court** or other governmental body of appropriate jurisdiction **determines that VERIZON is not required by Applicable Law to provide such Network Element or Combination, VERIZON may terminate its provision of such Network Element or Combination to SPRINT.** VERIZON will give SPRINT ninety (90) days advance written notice of such termination. . . .

Id. at Part II: Unbundled Network Elements & Combination, § 1.7, 1.7.2. Like Section 8.4, this section provides that if "the FCC" or "a court" determines that "Verizon is not required by Applicable Law" to "provide [a] Network Element or Combination," Verizon MA "may terminate its provision" of that UNE. As in other agreements, this Agreement defines "Applicable Law" as "all laws, regulations, and orders applicable to each Party's performance of its obligations hereunder." *Id.* at Attachment 1: Definitions § 1.

As explained above, the *TRO* and the *TRRO* are decisions of the FCC that determine that Verizon is "not required" to provide certain UNEs. Like Section 8.4, nothing in Section 1.7 states — or even suggests — that Verizon MA must amend its agreement before it terminates its provision of those UNEs. In fact, Sections 8.4 and 1.7 must be read as excluding this requirement because it is not included in those sections as a requirement. Therefore, Verizon MA "may terminate" its provision of those UNEs without amending the agreement.

Group 5 CLEC's Interconnection Agreement

Verizon MA's agreement with the only CLEC in Group 5 - DIECA d/b/a/ Covad Communications Corp. - has terms specifically stating that Verizon MA's obligations to provide UNEs under the terms of the agreement are limited to the requirements of federal law, as well as more general change-of-law language making it clear that the parties understood and agreed that their UNE obligations under the Agreement could, in circumstances such as those here, be conformed to the obligations of federal law without an amendment. Sections 11.0 and 11.1 of that agreement provide:

> **11.0 UNBUNDLED ACCESS -- SECTION 251(c)(3)**
>
> **To the extent required of each Party by Section 251 of the Act,** each Party shall offer to the other Party **nondiscriminatory access to Network Elements on an unbundled basis** at any technically feasible point.
>
> **11.1 Available Network Elements**
>
> At the request of TCG, **BA shall provide TCG access *to*** the following **unbundled Network Elements in accordance with the requirements of the FCC Regulations**:

Verizon-Covad Agreement,[20] General Terms & Conditions §§ 11.0, 11.1 (emphases added). These provisions appear at the start of the series of provisions addressing Verizon MA's obligation to provide Covad with UNEs under the terms of the agreement.

Both Sections 11.0 and 11.1 state that Verizon MA "shall offer" UNEs to Covad, but only "[t]o the extent required . . . by *Section 251 of the Act*" and only " in accordance with the requirements of the *FCC Regulations*."[21] (emphasis added). This contemplates the FCC's

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[20] Verizon MA is referred to in these interconnection agreements by its former name, "BA" or Bell Atlantic.

[21] The Covad agreement, in turn, defines "FCC Regulations" as "Title 47 of the Code of Federal Regulations" and the "Act" as the "Communications Act of 1934 (47 U.S.C. §151 et seq.) as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC …" Verizon-Covad Agreement, Definitions §§ 1.1, 1.32.

findings in the *TRO* and the *TRRO* that incumbents, such as Verizon MA, are not required to unbundle certain network elements (*e.g.*, enterprise and mass market switching, OCn and other loops, dedicated transport, etc.). Moreover, Sections 11.0 and 11.1 limit Verizon MA's obligations to provide UNEs to the obligations imposed by the FCC's valid regulations.

The relevant change-of-law provision in the Verizon-Covad Agreement is found in Section 28.3, which provides:

> The Parties recognize that the FCC has issued the FCC Regulations implementing Sections 251, 252, and 271 of the Act that affect certain terms contained in this Agreement. **In the event that any one or more of the provisions contained herein is inconsistent with any such FCC Regulations**, **the Parties agree to make only the minimum revisions necessary to eliminate the inconsistency.** Such minimum changes to conform this Agreement to the FCC Regulations shall not be considered material, and shall not require further Commission approval (beyond any Commission approval required under Section 252(e) of the Act).

Verizon-Covad Agreement, General Terms & Conditions § 28.3 (emphasis added). Section 28.3 thus requires an amendment *only* if a provision contained in the agreement "is inconsistent with any...FCC Regulations" and, even then, "the Parties agree[d] to make only the *minimum revisions necessary* to eliminate the inconsistency." *Id*. (emphasis added). That provision clearly demonstrates that the parties intended for the agreement to conform to the requirements of the FCC's regulations *without* the need for an amendment, wherever that is possible. Here, as shown above, the agreement expressly links Verizon MA's obligation to provide UNEs to the obligations currently imposed by the FCC's valid regulations. No provision of the agreement, therefore, is "inconsistent" with the FCC's regulations as modified by the *TRO* and the *TRRO*. Therefore, no amendment is necessary; instead, Verizon MA may discontinue providing UNEs that no longer are required by federal law (but only consistent with the *TRO* and *TRRO* mandatory transition plans).

Finally, the Verizon-Covad Agreement contains language particular to various UNEs that emphasizes the parties' intent to give automatic contractual effect to any removal of an unbundling obligation under the FCC's rules.[22] This further confirms Verizon MA's right to discontinue specific UNEs once federal law no longer requires Verizon to provide them.

Group 6 CLEC's Interconnection Agreement

The language in the only Group 6 Agreement - with ACC National Telecom Corp. ("ANTC") - recognizes that Verizon MA's provision of interconnection services under the agreement may change as a result of regulatory or judicial decisions . It specifically states:

> 35.0 REGULATORY APPROVAL
>
> This agreement is **subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction**. If, however, a regulatory authority or court in the exercise of its lawful jurisdiction enacts a Law or makes a finding that would necessitate a change that would affect the interconnection of network facilities or ANTC's ability to use any NYNEX service or Network Element (for example, ANTC's ability to combine certain Network Elements) ANTC shall have a reasonable time to modify or redeploy its network or operations to reflect such change.

Verizon-ANTC Agreement, Regulatory Approval § 35 (emphasis added). Like the other interconnection agreements described above, Verizon MA may discontinue UNEs eliminated by the FCC or the courts without amending the contract. Nothing in Section 35 states – or even suggests – that Verizon MA must amend its agreement before it can conform to current FCC regulations. The fact that the agreement provides ANTC with "a reasonable time to modify or redeploy its network or operations to reflect such a change" confirms the parties' clear intent that

[22] *See* Verizon-Covad Agreement, Line Splitting Amendment § 1.5 (Verizon may terminate the provision of any UNE or combination once the Department, the FCC, a court, or other governmental body of appropriate jurisdiction determines that Verizon is not required by Applicable Law to provide such UNE or combination); UNE Remand Amendment (A) (Verizon will provide access to Dark Fiber in accordance with, but only to the extent required by, Applicable Law).

Verizon MA has no contractual obligation to continue to provide UNEs that are no longer required under federal law.

B. Dispute Resolution Provisions

Verizon MA's interconnection agreements with the CLECs listed in Attachment A to the Department's March 1st Notice include various dispute resolution provisions. [23] The relevant

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[23] The majority of Verizon's interconnection agreements with those CLECs contain the following terms:

> 14.1 **Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties.** To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.
>
> 14.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.

Dispute Resolution §§ 14.1, 14.2 (emphasis added). *See* Verizon's interconnection agreements with the following CLECs: Acceris Communications Corp., ACN Communications Services, Inc., BCN Telecom, Broadview Network, Inc., Broadview NP Acquisition Corp., Budget Phone, Inc., BullsEye Telecom, Inc., Covista, Inc., DSCI Corp., DSLnet Communications LLC, LightWave Communocations, Inc., MCI WorldCom Communications, Inc., New Horizons Communications Corp., and Talk America, Inc. The same material terms are also included in Verizon's interconnection agreement with ICG Telecom Group, Inc. (§§ 14.1, 14.2, 14.3).

In addition, a shortened version of the above dispute resolution provisions is contained in Verizon's interconnection agreements with DIECA d/b/a Covad Communications Corp. (§ 29.9), Equal Access Networks LLC (§ 28.9), Essex Acquisition Corp. (§ 28.9), Focal Communications Corp. of MA (§ 17.0), KMC Telecom V, Inc. (§ 28.9), Level 3 Communications LLC (§ 28.9), Lightship Telecom LLC, (§ 28.9), McGraw Communications, Inc. (§ 28.9), and Sprint Communications Company (§ 17.0). It states that:

> **Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties, in the first instance.** Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction.

provisions of these agreements are identified in Exhibit II attached hereto. *See also* Exhibit IV, Table 1(b) for a summary of these provisions by CLEC. None of the dispute resolution provisions in the contracts at issue preclude Verizon MA from eliminating UNEs no longer required under federal law.

First, by their terms dispute resolution procedures only arise "except as otherwise provided in this Agreement." *Id.* at § 14.1. As demonstrated above, Verizon MA's interconnection agreements with these CLECs expressly do otherwise provide. All of the

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See e.g., Verizon-Sprint Communications Company, Dispute Resolution, § 17.0 (emphasis added).

Finally, Verizon's agreements with BrahmaCom, Inc. and CTC Communications Corp. contains the following language, in pertinent part:

> 16.1 The Parties recognize and agree that the Department has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve, may be submitted to the Department for resolution. The Parties agree to seek expedited resolution by the Department, and shall request that resolution occur in no event later than sixty (60) days from the date of submission of such dispute … During the Department proceeding each Party shall continue to perform its obligations under this Agreement; provided, however, that neither Party shall be required to act in any unlawful fashion …

Verizon MA's agreements with ACC National Telecom Corp. and PaeTec Communications, Inc. specify as follows:

> 38.1.1 Disputes arising out of the implementation, enforcement, or provisioning of Wholesale Services, or Unbundled Network Elements, or other services pursuant to (or contemplated by) this Agreement shall be addressed as set forth in Attachment ADR.
>
> 38.1.2 Disputes involving amounts billed shall be addressed as follows:
>
> (c) Within seven (7) Days of receipt of such notice each Party shall appoint a representative who shall be authorized and who shall attempt to resolve the issue through negotiations. If the Parties are unable to resolve issues related to the Disputed Amounts after the Parties' appointment of designated representatives, then either Party may elect to use the dispute resolution process set forth in Attachment ADR.

Although the dispute resolution provisions may differ in the above interconnection agreements, the same arguments that they do not preclude Verizon MA from discontinuing certain UNES, as permitted by federal law, would apply.

interconnection agreements permit Verizon MA to cease providing UNEs when no longer required, merely by provision of notice. *See, e.g.*, Verizon–Group 1 CLECs' Interconnection Agreements at § 4.7.

It is well established that a contract must be construed "as a whole, in a reasonable and practical way, consistent with its language, background, and purpose." *Cady v. Marcella*, 49 Mass. App. Ct. 334, 729 N.E.2d 1125, 1130 (2000), *citing USM Corp. v. Arthur D. Little Sys., Inc*., 28 Mass App. Ct. 108, 546 N.E.2d 888 (1989). In interpreting contracts, "words that are plain and free from ambiguity must be construed in their usual and ordinary sense." 729 N.E.2d at 1129. Requiring compliance with dispute resolution procedural requirements for lengthy negotiations and hearings would eviscerate unambiguous contract terms permitting Verizon MA to take certain action on notice to CLECs under its interconnection agreements. Such an interpretation conflicts with the rules of contract construction that a contract must be construed as a whole, giving effect to all of its provisions and avoiding a construction which would render any of those provisions illusory or meaningless.[24] *ABB Energy Capital, L.L.C. v. General Growth Management, Inc*., 2003 Mass. Super. LEXIS 178 (2003), *citing Seabrook Homeowners Assn., Inc. v. Gresser*, 517 A.2d 263, 269 (Del. Ch. 1986) (citations omitted), *aff'd*. 538 A.2d 1113 (Del. 1988).

[24] Massachusetts courts have traditionally held that a contract should be construed in such a way that no word or phrase is made meaningless or ineffective by interpreting another word or phrase, because the interpretation should favor a valid and enforceable contract - rather than one of no force and effect. *See Lexington Ins. Co. v. All Regions Chem. Labs*, 419 Mass. 712, 647 N.E.2d 399, 400 (1995), *citing Shayeb v. Holland*, 321 Mass. 429, 432, 73 N.E.2d 731 (1947); *Shea v. Bay State Gas Co.*, 383 Mass. 218, 224-25, 418 N.E.2d 597, 601 (1981); *McMahon v. Monarch Life Ins. Co.*, 345 Mass. 261, 264, 186 N.E.2d 827 (1962); *Baybank Middlesex v. 1200 Beacon Properties, Inc.*, 760 F.Supp. 957, 963 (D. Mass. 1991) (a contract is to be interpreted as a whole, and reasonable effect must be given to all of its provisions in order to effectuate its overall purpose. In other words, a contract must not, whenever possible, be construed so as to render any of its terms "meaningless.")

Second, the generally applicable dispute resolution procedures in the interconnection agreements are also not applicable to the instant situation, which is *specifically* addressed by the parties' interconnection agreements. Courts have recognized that if two provisions of a contract are in conflict, the *specific* provision *controls* over the more *general* provision. *The Trustees of Boston College v. The Big East Conference*, 18 Mass. L. Rep. 177, 2004 Mass. Super. LEXIS 298 (2004), *citing Southwestern Elec. Coop., Inc. v. FERC*, 347 F.3d 975, 982 (D.C. Cir. 2003). Here, Verizon MA's interconnection agreements specifically delineate the parties' rights in the event Verizon MA is no longer obligated to offer certain UNEs. Those specific provisions control over generally applicable dispute resolution procedures.

Finally, the dispute resolution procedures of Verizon's interconnection agreements with CLECs identified in Attachment A are not relevant because of the procedural posture of this case. Verizon MA sought arbitration in this matter to amend its agreements to reflect the requirements of federal law. As explained above, Verizon MA's interconnection agreements with those CLECs contain notice provisions that permit Verizon MA to eliminate unbundled access to UNEs no longer required by the FCC. Therefore, this would not constitute a dispute arising under the agreement – and the agreements' dispute resolution procedures are applicable *only* to disputes arising under the agreements.

Briefing Question 2:

Indicate whether a change of law or dispute resolution provision has been triggered and state the date on which each condition precedent or party obligation (e.g., notice requirements) was met, if applicable, with regard to the implementation of (1) the Triennial Review Order, (2) USTA II, (3) the Interim Rules Order, (4) the Triennial Review Remand Order, or (5) any other statutory, judicial, or regulatory change, state or federal, that you claim did modify the parties' rights under the interconnection agreement.

Response to Briefing Question 2:

The provisions described in Verizon MA's Response to Briefing Question No. 1 above were triggered by the *Triennial Review Order*, which took effect on October 2, 2003. Verzion sent the following formal notices pursuant to the terms of its interconnection agreements with those CLECs identified in Attachment A.

1) October 2, 2003, Notice of Discontinuation of UNEs pursuant to the FCC's *Triennial Review Order*;
2) May 18, 2004, Notice of Discontinuation of Enterprise Switching and the associated Shared Transport UNE;
3) May 18, 2004, Notice of Discontinuation of Unbundled Local Circuit Switching Subject to the Four-Line Carve-Out Rule;
4) June 21, 2004, Notice of Line Sharing Rate Increases In Connection with the FCC Rules for Line Sharing Arrangements;
5) July 2, 2004, Subsequent Notice of Discontinuation of Enterprise Switching and the associated Shared Transport UNE (additional information provided);
6) July 2, 2004, Subsequent Notice of Discontinuation of Discontinuation of Unbundled Local Circuit Switching Subject to the Four-Line Carve-Out Rule (additional information provided);

Copies of those notices are contained in Exhibit III attached hereto.[25] *See also* Exhibit IV, Table 2 for a listing by CLEC regarding distribution of those notices.

With respect to the FCC's *TRRO* rules which affirmatively prohibited requesting carriers from obtaining mass market switching (including UNE-P) and certain loop and transport UNEs as of March 11, 2005, and which established a transition plan for the embedded base, there cannot be any serious question that these rules must be implemented by ILECs, CLECs, and state commissions according to their terms. As discussed above, the interconnection agreements cannot exempt carriers from complying with an explicit directive of federal law. Thus, compliance with notice provisions of interconnection was not a condition to implementation of the federal rules. Verizon did, however, inform CLECs in an industry notice of February 10, 2005, that it would implement the mandatory FCC *TRRO* rules as directed by the FCC. See Exhibit III, February 10, 2005, Notice of FCC Action Regarding UNE in its *TRRO*.

CONCLUSION

For the foregoing reasons, the language contained in each of Verizon MA's interconnection agreements with the CLECs identified in Attachment A of the Hearing Officers' March 1st Notice reflect an unambiguous and express agreement to relieve Verizon MA of any obligation to provide access to any UNE that it is not required to provide under federal law. Verizon MA properly satisfied notice requirements in accordance with the terms of those interconnection agreements following the effective date of the *TRO*. Likewise, nothing in the interconnection agreements could affect compliance with the express directives of the FCC in the *TRRO*. Because there is no need to amend the agreements to give Verizon MA the contractual

[25] Also attached is an August 13, 2004, notice from Verizon to DSCI Corporation regarding the Four-Line Carve-Out Rule and Enterprise Switching.

right to discontinue providing certain UNEs or otherwise comply with binding federal law, the dispute resolution provisions contained in the interconnection agreements are not invoked under these circumstances.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys,

/s/Barbara Anne Sousa
Bruce P. Beausejour
Barbara Anne Sousa
185 Franklin Street – 13th Floor
Boston, MA 02110-1585
(617) 743-7331

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